

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION No.130 OF 2006

Shri Khopade Dilip Subhaji & Ors. ..Petitioners
Versus
The Collector, Pune and Ors. ..Respondents

Ms Aradhana Latne i/b Mrs.Samidha Dongre for petitioners
Ms Vaidehi Mhaispurkar, AGP for State

CORAM : S. C. DHARMADHIKARI, J
DATE : 23RD FEBRUARY, 2006

P.C.:

1. The Petitioners by this petition under Article 227 of the Constitution of India challenges the order passed by the Addl. Commissioner, Pune Division, Pune in Appeal/Revision No.101 of 2005. By the order under challenge, passed on 3.1.2006, the appeal of the petitioners is partly allowed to the extent of slab from 1.20 H to 0.80 H. The petitioners raised several contentions in their application preferred on 19th December, 2005. The application/appeal invokes jurisdiction of the Addl. Commissioner under Section 48 of the Land Acquisition Act, 1894. The Petitioners application has pointed out that the Special Land Acquisition Officer has not considered the provisions of

resettlement and various circulars and notifications thereunder granting benefit to the joint family and more particularly that of partition of lands belonging to it. Similarly, the area which is uncultivable is also not excluded from the pervue of notification. A contention was raised that the Certificate was issued by Executive Engineer, Nira Devghar Project should have been considered. The land has been acquired, according to the petitioners, long time back, but only because of some administrative problems the possession is not taken. Such a notification/letter/certificate from the Executive Engineer therefore could not have been brush aside.

2. The order is sought to be justified by the learned AGP, but after hearing both sides, perusing the same with her assistance, I find that no reasons are assigned for rejecting the several contentions raised by the petitioners and more particularly on the issue of proposed acquisition for Gunjavni Left Bank Cannel and exclusion of uncultivable lands.

3. In my view, appropriate directions would be to retore the said application/appeal preferred by the

petitioners to the file of the Additional Commissioner for disposal afresh and in accordance with the law after hearing the petitioners. Accordingly, the order under challenge is set aside. The application under Section 48 is restored to the file of the Addl. Commissioner for disposal afresh and in accordance with law. The order of status-quo passed on 18th January 2006 to continue till the Addl. Commissioner decides the application/appeal.

4. The petitioners shall appear before the Addl. Commissioner on 13th March 2006 and said application shall be decided within a period of eight weeks from the date of such appearance.

5. The Commissioner shall not be influenced by any observations made in this order but should proceed to dispose of the application on its own merits in accordance with law.

6. With these directions the petition stands disposed off.

(S.C.Dharmadhikari, J.)